

United States District Court
Central District of California

WELLS FARGO BANK, N.A.,

Plaintiff,

v.

LYNN BEHREN ZIMMERMAN;

CLARKE PATTON PAXTON; and DOES

1-10, inclusive,

Defendants.

Case № 2:15-cv-09188-ODW (E)

**ORDER GRANTING REMAND IN
PART**

I. INTRODUCTION

On June 8, 2015, Plaintiff Wells Fargo Bank N.A. (“Wells Fargo”) filed an unlawful detainer action and summons against Defendants Lynn Behrens Zimmerman and Clarke Patton Paxton (collectively, “Defendants”) seeking restitution and possession of the property located as 175 El Sueno Road, Santa Barbara, CA 93110 (the “Property”), damages in the amount of \$123.33 per day from May 30, 2015 through the date of entry of judgment, costs of suit, and other relief as the Court deems just and proper. (Complaint, ECF No. 1, Ex. A.)

On November 25, 2015, Defendants filed a Notice of Removal for the underlying unlawful detainer action. (Notice, ECF No. 1.) Defendants’ instant attempt to remove the action is their sixth, despite five previous orders of this Court remanding the matter to the Santa Barbara County Superior Court for lack of subject matter jurisdiction. *See* Case No. 2:15-cv-08651-CAS-MRW, ECF No. 10 (December 3, 2015 Remand Order); Case No. 2:15-cv-08938-ODW-E, ECF No. 5 (November 18, 2015 Remand Order); Case No. 2:15-cv-08268-CAS-MRWx, ECF No. 10 (November 10, 2015 Remand Order); Case No. 2:15-cv-07789-CAS-MRW, ECF No. 11 (October 15, 2015 Remand Order); Case No. 2-15-cv-07268-MWF-MRW, ECF No. 9 (September 22, 2015 Remand Order).

Specifically, in his September 22, 2015 Order, the Honorable Michael W. Fitzgerald remanded the case to the Santa Barbara County Superior Court on the grounds that this Court lacks subject matter jurisdiction over the action, which states a single claim for unlawful detainer. (September 22, 2015 Remand Order.) Following remand of the action, no answer was filed with the state court, and Default Judgment for Possession was entered on October 1, 2015. (*See* October 15, 2015 Remand Order 1. (citing ECF No. 8-1, Default Judgment.)) A Writ of Possession was issued on this same date. (*Id.*)

On October 5, 2015, Defendant Zimmerman filed her second notice of removal for the underlying unlawful detainer action. (*See* Case No. 2:15-cv-07789-CAS-

1 MRW, ECF No. 1, Notice of Removal.) The second notice of removal attached
 2 plaintiff's original, unmodified June 8, 2015 complaint and again stated, in language
 3 lifted verbatim from the previous notice of removal, that "this case is not founded on
 4 the basis of a Federal Defense but rather on the merits of [a] Constitutional issue and .
 5 . . 28 U.S.C. Section 1331 (Federal Question), 28 U.S.C. Section 1332 (Diversity) and
 6 28 U.S.C. Section 1333 (Admiralty, Maritime and Prize Cases)." (October 5, 2015
 7 Notice of Removal 7.) *Compare* October 5, 2015 Notice of Removal with Case No.
 8 2-15-cv-07268-MWF-MRW, ECF No. 1, September 16, 2015 Notice of Removal.
 9 While Defendants' second attempt at removing the unlawful detainer action argued
 10 one additional ground for removal, that the Superior Court judge should be recused
 11 due to an alleged conflict of interest, this purported additional justification lacked
 12 merit, as the Court explained in its second Remand Order. (October 15, 2015 Remand
 13 Order, at 2, 4.)

14 On October 22, 2015, Defendants filed their third Notice of Removal, which
 15 was an identical, word-for-word copy of their previous Notice and again sought to
 16 remove the action on exactly the same grounds that the Court previously expressly
 17 rejected. *Compare* October 5, 2015 Notice of Removal with October 22, 2015 Notice
 18 of Removal. Accordingly, on November 10, 2015, the Court remanded the case for a
 19 third time, and also ordered Defendants to pay Plaintiff Wells Fargo \$500.00 in
 20 sanctions, pursuant to Federal Rule of Civil Procedure 11(c). *See Wells Fargo Bank*
 21 *NA v. Zimmerman*, No. 215CV08268 CASMRWX, 2015 WL 6948576, at *4 (C.D.
 22 Cal. Nov. 10, 2015. The Court also advised Defendants that **"any future attempt to**
 23 **remove this action without an 'objectively reasonable basis for removal' may**
 24 **result in an award of attorney's fees for plaintiff Wells Fargo."** *Id.* (emphasis in
 25 original) (citing *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 136 (2005)).

26 On November 5, 2015—while Defendants' third Notice of Removal and
 27 Plaintiff's Motion to Remand were still pending before the Court—Defendants filed a
 28 fourth Notice of Removal that again offered the very same purported grounds for

1 removal. On November 12, 2015, Plaintiff filed yet another Motion to Remand, as
2 well as an ex parte application to shorten time for hearing on the Motion. (*See* 2:15-
3 cv-08651-CAS-MRW, ECF Nos. 7–8.)

4 Again without waiting for the Court’s inevitable Remand order, Defendants
5 filed the same Notice of Removal on November 17, 2015. (2:15-cv-08938-ODW-E,
6 ECF No. 1.) This Court then *sua sponte* remanded the November 17, 2015 filing.
7 (*Id.*, ECF No. 5.) Then, on December 3, 2015, the Court remanded the November 5,
8 2015 filing, this time ordering Defendants to pay Plaintiff \$1,000 in sanctions under
9 Federal Rule of Civil Procedure 11(c) and putting Defendants on notice that any
10 subsequent attempts to frivolously remove this action would result in an award of
11 attorney’s fees for Plaintiff and that the Court would designate Defendants as
12 vexatious litigants pursuant to Local Rule 83. (2:15-cv-08651-CAS-MRW, ECF No.
13 10.)

14 Before the Court now is Defendants’ November 25, 2015 Notice of Removal—
15 their sixth removal attempt. (ECF No. 1.) Minor changes in typeface
16 notwithstanding, the Notice of Removal mirrors the prior Notices. On December 9,
17 2015, Plaintiff filed a Motion to Remand and an ex parte application to shorten the
18 time for hearing on the matter. (ECF Nos. 9–10.)

19 This Court has a *sua sponte* obligation to confirm that it has subject matter
20 jurisdiction. *Nevada v. Bank of Am. Corp.*, 672 F.3d 661, 673 (9th Cir. 2012)
21 (“[I]t is well established that ‘a court may raise the question of subject matter
22 jurisdiction, *sua sponte*, at any time during the pendency of the action’” (quoting
23 *Snell v. Cleveland, Inc.*, 316 F.3d 822, 826 (9th Cir. 2002))). As explained further
24 below, the Court concludes, for the same reasons articulated in all five of the Court’s
25 prior orders remanding this case, that it lacks subject matter jurisdiction over this
26 unlawful detainer action and must again remand to state court.

27 II. LEGAL STANDARD

28 Federal courts have subject matter jurisdiction only as authorized by the

1 Constitution and Congress. U.S. Const. art. III, § 2, cl. 1; *see also Kokkonen v.*
 2 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A suit filed in state court
 3 may be removed to federal court only if the federal court would have had original
 4 jurisdiction over the suit. 28 U.S.C. § 1441(a). Federal courts have original
 5 jurisdiction where an action arises under federal law, *id.* § 1331, or where each
 6 plaintiff’s citizenship is diverse from each defendant’s citizenship and the amount in
 7 controversy exceeds \$75,000, *id.* § 1332(a).

8 The removal statute is strictly construed against removal, and “[f]ederal
 9 jurisdiction must be rejected if there is any doubt as to the right of removal in the first
 10 instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The party seeking
 11 removal bears the burden of establishing federal jurisdiction. *Durham v. Lockheed*
 12 *Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006). The court may remand the action
 13 *sua sponte* “[i]f at any time before final judgment it appears that the district court
 14 lacks subject matter jurisdiction.” 28 U.S.C. § 1447(c); *see also United Inv’rs Life*
 15 *Ins. Co. v. Waddell & Reed Inc.*, 360 F.3d 960, 967 (9th Cir. 2004).

16 III. DISCUSSION

17 A “party is not entitled to file a second notice of removal upon the same
 18 grounds where the district court previously remanded the action.” *Allen v. UtiliQuest,*
 19 *LLC.*, 2014 WL 94337, *2 (N.D. Cal. Jan. 9 2014) (citing *St. Paul & C. Ry. Co. v.*
 20 *McLean*, 108 U.S. 212, 217 (1883)). As the Ninth Circuit clearly held in *Seedman v.*
 21 *U.S. Dist. Ct. for Cent. Dist. of Cal.*, 837 F.2d 413 (9th Cir. 1988),

22 Once a district court certifies a remand order to state court it is divested
 23 of jurisdiction and can take no further action on the case. Contrary to
 24 respondent’s position, a second removal petition based on the same
 25 grounds does not ‘reinvest’ the court’s jurisdiction. A remand order
 26 returns the case to the state courts and the federal court has no power to
 27 retrieve it. As the statute makes clear, if the remand order is based on
 28 section 1447(c), a district court has no power to correct or vacate it.

1 *Id.* at 414.

2 “Th[e] general prohibition on successive removals, however, does not apply
3 ‘when subsequent pleadings or events reveal *a new and different ground* for
4 removal.’” *Leon v. Gordon Trucking, Inc.*, 76 F. Supp. 3d 1055, 1062 (C.D. Cal.
5 2014) (quoting *Kirkbride v. Continental Casualty Co.*, 933 F.2d 729, 732 (9th
6 Cir.1991) (emphasis in original)). Here, as explained *supra*, Defendants’ sixth Notice
7 of Removal appears to be an identical, word-for-word reiteration of their previous
8 Notices and therefore seeks to remove the action on exactly the same grounds that the
9 Court expressly rejected in its prior orders. Accordingly, for the same reasons
10 explained in this Court’s prior orders remanding plaintiff’s unlawful detainer action,
11 this Court continues to lack subject matter jurisdiction and must again remand. *See*
12 *McGee v. Seagraves*, 2006 WL 2014142, at *2 (E.D. Cal. July 17, 2006) (noting
13 unlawful detainer actions are pure matters of state law and “are strictly within the
14 province of state court”); *see also Deutsche Bank Nat’l Trust Co. v. Leonardo*, 2011
15 U.S. Dist. LEXIS 83854, at *2 (C.D. Cal. Aug. 1, 2011) (“[T]he complaint only
16 asserts a claim for unlawful detainer, a cause of action that is purely a matter of state
17 law.”).

18 In addition, the Court again notes—as it did in two prior orders remanding the
19 case—that “absent new and different grounds for removal based on newly discovered
20 facts or law, a defendant who improperly removes a case after a federal court
21 previously remanded it risks being sanctioned under Federal Rule of Civil Procedure
22 11.” *Fed. Home Loan Mortgage Corp. v. Pulido*, 2012 WL 5199441, *2 (N.D. Cal.
23 Oct. 20, 2012) (citing *Benson v. SI Handling Systems, Inc.*, 188 F.3d 780, 783 (7th
24 Cir.1999) (“Multiple removals could encounter problems—could even lead to
25 sanctions—if nothing of significance changes between the first and second tries”
26 (internal citation omitted))); *see also Leon*, 76 F. Supp. 3d at 1063. Here, Defendants
27 were previously admonished that sanctions could issue if they frivolously sought to
28 remove this action again, and indeed the Court issued sanctions in the amount of

1 \$500.00 in its November 10, 2015 Remand Order and an additional \$1,000 in its
 2 December 3, 2015 Order. (2:15-cv-08268, ECF No. 10; 2:15-cv-08651, ECF No. 10.)
 3 This is now Defendants' sixth attempt at removing this action, the Court again finds it
 4 appropriate to issue sanctions pursuant to Rule 11(c), this time in the amount of
 5 \$2,500.00. Defendants will pay this sanction, along with the outstanding \$1,500,
 6 within ninety days (on or before March 16, 2016).

7 Plaintiff also asks the Court to designate Defendants as vexatious litigants under
 8 Local Rule 83. (ECF No. 8, Motion for Remand 7.) In its December 3, 2015 Remand
 9 Order, this Court warned Defendants that, should they file another Notice of Removal
 10 relating to the underlying unlawful detainer action, the Court would take "punitive
 11 remedial action" and potentially order Defendants to appear before the Court to
 12 explain why they should not be deemed vexatious litigants. (2:15-cv-08651, ECF No.
 13 10 7.) (quoting *Schneider v. Roberts*, No. CV 13-06690-UA, 2014 WL 935157, at *5
 14 (C.D. Cal. Mar. 5, 2014) (King, C.J.)).

15 While this Order comes after the December 3, 2015 Order, the instant filing
 16 predates the December 3 Order's warning. Therefore, the Court declines to designate
 17 Defendants as vexatious litigants at this time. However, should Defendants file any
 18 more Notices of Removal without an objectively reasonable basis for that removal, the
 19 Court will not hesitate in ordering Defendants be deemed vexatious. *Molski v.*
 20 *Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057–58 (9th Cir. 2007) ("The All Writs
 21 Act, 28 U.S.C. § 1651(a), provides district courts with the inherent power to enter pre-
 22 filing orders against vexatious litigants.")¹

23
 24 ¹ C.D. Cal. Local Rule 83-8 sets out this Court's policy regarding vexatious litigants and provides that:

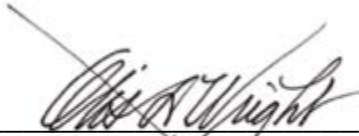
25 It is the policy of the Court to discourage vexatious litigation and to provide persons
 26 who are subjected to vexatious litigation with security against the cost of defending
 27 such litigation and appropriate orders to control such litigation. It is the intent of this
 28 rule to augment the inherent powers of the Court to control vexatious litigation and
 nothing in this rule shall be construed to limit the Court's inherent power in that
 regard. [L-R 83-8.1]

IV. CONCLUSION

For the reasons discussed above, Plaintiff Wells Fargo's Motion to Remand is **GRANTED** in part, and this case is hereby **REMANDED** to the Santa Barbara County Superior Court, Case No. 15CV01403, for lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1447(c). Plaintiff's pending ex parte application to shorten time for hearing is hereby **DENIED AS MOOT**. In addition, the Court also orders Defendants to **pay Plaintiff an additional \$2,500.00 in SANCTIONS, due to Plaintiff by 3/16/2016**, pursuant to Federal Rule of Civil Procedure 11(c). Defendants are also put on notice that any future attempt to remove the underlying unlawful detainer action **WILL** result in the designation of Defendants as vexatious litigants, in accordance with C.D. Cal. Local Rule 83.

IT IS SO ORDERED.

December 16, 2015



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE

On its own motion or on motion of a party, after opportunity to be heard, the Court may, at any time, make such other orders as are appropriate to control the conduct of a vexatious litigant. Such orders may include, without limitation, a directive to the Clerk not to accept further filings from the litigant without payment of normal filing fees and/or without written authorization from the Judge of the Court or a Magistrate Judge, issued upon such showing of the evidence supporting the claim as the Judge may require. [L-R 83-8.2]

Any order issued under L.R. 83-8.2 shall be based on a finding that the litigant to whom the order is issued has abused the Court's process and is likely to continue such abuse, unless protective measures are taken. [L-R 83-8.3]